

MEMORANDUM OF AGREEMENT
between the
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS;
the DEPARTMENT OF ENVIRONMENTAL PROTECTION;
and the
DEPARTMENT OF FISHERIES, WILDLIFE & ENVIRONMENTAL LAW
ENFORCEMENT

I. Parties

This Memorandum of Agreement ("MOA") is made as of this 30th day of May, 2003 between: (1) the *Executive Office of Environmental Affairs* ("EOEA"); a secretariat of the executive branch of the Commonwealth, established pursuant to M.G.L. c. 21A, s.1, with supervisory authority over the state agencies under EOEA, having its principal place of business at 251 Causeway Street, Suite 500, Boston, MA 02114; (2) the *Department of Environmental Protection* ("DEP"), an agency of the Commonwealth of Massachusetts under EOEA established pursuant to M.G.L. c. 21A, s.7, having its principal place of business at One Winter Street, Boston, Massachusetts 02108 and (3) the *Department of Fisheries, Wildlife & Environmental Law Enforcement* ("DFWELE"), an agency of the Commonwealth of Massachusetts under EOEA established pursuant to M.G.L. c. 21A, s.7, having its principal place of business at 251 Causeway Street, Suite 400, Boston, MA 02114. EOEA, DEP and DFWELE may hereinafter be collectively referred to as the "Parties" in this MOA.

II. Background and Purpose of the MOA

1. The HubLine project (the "Project") being constructed by the Algonquin Gas Transmission Company ("Algonquin") entails the installation of 29.4 miles of 30 inch diameter pipe, beginning in the municipalities of Salem and Beverly, MA where the pipe connects with the Phase III project of the Maritimes & Northeast Pipeline, L.L.C. and terminating in the municipality of Weymouth, MA. The Project pipelines will typically be buried between 3 to 10 feet below the sea floor, and will traverse Beverly Harbor, Salem Sound, Massachusetts Bay, Broad Sound, Quincy Bay, and the Fore River. Consequently, among a range of other federal, state and local permits and approvals, the Project activities required

Algonquin to obtain a Section 401 Water Quality Certification and a Chapter 91 License from DEP pursuant to the above referenced statutes and regulations.

2. DEP issued its Water Quality Certification for the Project on August 16, 2002, and the final Chapter 91 License on September 26, 2002. Both of these DEP permits include a detailed schedule of construction activities and associated Time of Year ("TOY") work windows that were established by DEP with input from EPA, NOAA's National Marine Fisheries Services, and DFWELE's Division of Marine Fisheries ("DMF"). See Condition 17 of the Water Quality Certification and Special Condition No. 4 of the Chapter 91 License. The purpose of the TOY windows is to minimize adverse environmental impacts to fisheries resources and habitat that will be affected by the construction of the Project, including multiple fisheries passage, spawning, development and/or sediment activities that are not discrete events with set end points.

3. Algonquin has commenced construction of the pipeline and, among other steps, has completed laying the pipeline on the seabed along the entire route in preparation for burial and has lowered the pipeline into an open trench along major portions of the route. At Algonquin's written request, DEP approved, with conditions, two minor time extensions pursuant to Condition 17 of the Water Quality Certification and Special Condition No. 4 of the Chapter 91 License. See the Amended Water Quality Certification dated March 27, 2003 and two DEP letters dated April 3, 2003 and April 10, 2003.

4. In a letter dated April 17, 2003, Algonquin requested DEP to approve the continuation of certain Project activities significantly beyond the applicable TOY work window end dates of April 30, 2003 and May 31, 2003, as applicable, in order to complete the pipeline during this construction season. DEP, after consultation with DMF and EPA, determined that, on balance, there would be less environmental impact to authorize Algonquin to continue Project activities beyond the April 30, 2003 and May 31, 2003 end dates, subject to additional conditions and substantial related mitigation, rather than to require Algonquin to halt construction until it can be resumed at a later time. Among the primary considerations supporting its determination, DEP is seeking to avoid and/or minimize impacts from the unburied portions of the pipe to the seasonal inshore lobster migration. DEP further concluded that benthic communities are likely now developing along the pipeline, including burrowing by winter, flounder, lobster

and crabs, which would be destroyed if work resumed at a later date, and that such intra-annual cumulative impact would likely delay recovery of habitat functions and values.

5. On May 9, 2003, DEP and Algonquin reached an agreement in principle pursuant to which DEP agreed to exercise enforcement forbearance regarding the continuation of work by Algonquin that falls outside the TOY windows contained in the above referenced Water Quality Certification and Chapter 91 License contingent upon DEP and Algonquin entering into an administrative consent order ("Consent Order") by May 16, 2003 to (a) address and condition further work by Algonquin outside the existing TOY windows, (b) require Algonquin to provide \$5 million to fund additional mitigation activities, and (c) impose stipulated penalties for any future noncompliance with the Consent Order. DEP and Algonquin were not able to reach closure on all of the final terms and language of the ACO. However, in view of the progress made on the ACO, DEP agreed on May 16, 2003 to extend its exercise of enforcement forbearance to May 21, 2003, and then one final time, to May 23, 2003.

6. DEP and Algonquin entered into a final Consent Order on May 23, 2003. Under the Consent Order, Algonquin shall make a total contribution of \$5,000,000 to the Commonwealth for the purposes of assessing and providing appropriate mitigation and restoration for any short or long term impacts to aquatic resources and habitat that may be associated, directly or indirectly, with Algonquin's continuation of Project activities beyond the April 30, 2003 and May 31, 2003 TOY work window and dates. More specifically, on the effective date of the Consent Order, Algonquin shall contribute the \$4.9 million to *The Commonwealth of Massachusetts Marine Mammals and Fisheries Research and Conservation Trust (hereinafter the "Trust Monies")*, an expendable trust previously established by DMF to accept mitigation funds provided by Algonquin pursuant to the Water Quality Certification.

7. The Consent Order requires that the Trust Monies shall be used for the purposes described above. The Consent Order further states that in developing the criteria and procedure for determining appropriate

mitigation and/or restoration projects to be funded from the Trust Monies, DMF shall undertake a public review and comment process and seek the input of interested stakeholders and relevant state and federal agencies. DMF shall thereafter select all work, including mitigation and/or restoration projects, in accordance with the criteria established pursuant to the above process.

8. EOEa, DEP and DFWELE have concluded that an MOA between the Parties is necessary in order to further the above described purposes of the Consent Order and to ensure that the Trust Monies shall be used to effectively mitigate and/or restore any short or long term impacts to aquatic resources and habitat that may be associated, directly or indirectly, with Algonquin's continuation of Project activities as authorized in the Consent Order.

11. Terms of the MOA

NOW, THEREFORE, for the reasons set forth above, EOEa, DEP and DFWELE agree as follows:

1. Of the total \$5 million contribution made by Algonquin pursuant to the Consent Order, no more than \$1 million will be expended for assessment and/or monitoring activities. Included within this \$1 million limit is no more than \$100,000 of the total \$5 million contribution to be credited to the cost of Algonquin's implementation of a Supplemental Monitoring Plan during the implementation of the Work authorized in the Consent Order.

2. The Parties reaffirm that, as provided in the Consent Order, DMF shall develop a criteria and procedure for determining appropriate mitigation and/or restoration projects to be funded from the Trust Monies. More specifically, the Parties, pursuant to this MOA, agree that no later than six (6) months from the effective date of this MOA, DMF shall complete a public review and comment process and seek the input of interested stakeholders and relevant state and federal agencies

in establishing a project selection criteria. The Parties further agree that any such project selection criteria shall retain and use the basic hierarchy of mitigation/restoration preferences described in Paragraph 3 below. DMF shall thereafter select all work, including mitigation and/or restoration projects, in accordance with the criteria established pursuant to the above process. In addition, the final project selection criteria developed by DMF pursuant to the above process shall be subject to the approval of EOE and DEP.

3. Hierarchy of Mitigation/Restoration Preferences. The Parties agree that the marine resources (listed in alphabetical order) receiving the greatest amount of impact from the Project are as follows:

Anadromous fish runs (i.e. - alewives, shad, herring)
 Atlantic Cod
 American lobster
 Blue Mussels
 Eelgrass
 Hard-bottom encrusting community
 Ocean Quahog
 Sea Scallop
 Soft-bottom benthic infaunal community
 Softshell clam
 Surf clam
 Winter flounder
 Yellowtail flounder

The Parties further agree that the final project selection criteria shall retain and use the following basic hierarchy of mitigation/restoration preferences:

1. *On Site/In Kind*: Projects proposing to restore one or more of the specific affected resources listed above within the footprint or immediate vicinity of the impact areas will be given the highest priority for funding.

2. *In Kind/off Site*: Projects proposing to restore one or more of the affected resources listed above within the greater Massachusetts Bay system, but removed from the impact areas shall be given the 2nd priority for funding.

3. *On Site/Out of Kind*: Projects proposing to restore marine resources not on the affected resource list above, but within the footprint or immediate vicinity of the impact areas shall be giving the 3rd priority for funding.

4. *Off Site/Out of Kind*: Projects proposing to restore marine resources not on the affected resource list above and removed from the project area will receive the lowest priority for funding.

In addition, the project selection criteria shall consider the probability of success and technical feasibility of any particular mitigation and/or restoration proposal.

4. Prior to the final selection of a project in accordance with the established criteria, DMF shall seek public review and comment and the input of interested stakeholders and relevant state and federal agencies. In addition, the final selection of a project in accordance with the established criteria shall be subject to the approval of EOEa and DEP. DMF shall begin funding mitigation and/or restoration projects in accordance with this MOA within eighteen (18) months from the effective date of this MOA, and expend the Trust Monies in accordance with this MOA on assessment activities and mitigation and/or restoration projects within five (5) years from the effective date of the MOA.

5. On an annual basis, DMF shall submit a written report to EOEa detailing the progress of and expenditures related to assessment activities and mitigation and/or restoration projects funded from the Trust Monies, and provide a copy of the report to DEP at the same time.

6. The Parties agree that if the Secretary of EOEA determines there is significant non-performance with the provisions of this MOA, the Secretary shall have the authority to take any remaining funds of the Trust Monies and establish a new funding and management mechanism that will meet the spirit and intent of the above described requirements of the Consent Order and this MOA.

7. EOEA, DMF and DFWELE agree to cooperate with each other reasonably, actively and in good faith to effectuate the provisions of this MOA. The Parties hereby initially appoint the following as their Authorized Representatives:

- EOEA: Stephen Pritchard
Executive Office of Environmental Affairs
251 Causeway Street, Suite 500
Boston, MA 02114
FAX NO. (617) 626-1181
- DEP: Lealdon Langley, Director of Wetlands and Waterways
Program
Department of Environmental Protection
One Winter Street Floor
Boston,, MA 02108
FAX NO. (617) 292-5696
- DFWELE: Paul Diodati, Director
Division of Marine Fisheries
251 Causeway Street, Suite 400
Boston, MA 021 14
FAX NO. (617) 626-1509

8. All notices or other communications required or permitted to be given under this MOA shall be in writing, signed by a duly authorized representative of the Parties, and shall be deemed delivered if: (i) forwarded by facsimile transmission to the attention of the designated person at the fax numbers indicated above, and mailed, postage prepaid, by regular U.S. mail, to the persons and addresses above, or (ii) delivered by hand or by recognized overnight delivery service (with evidence of receipt) to the principal office of the intended party, as indicated above, unless such address or facsimile number is otherwise designated by written notice to the other Party.

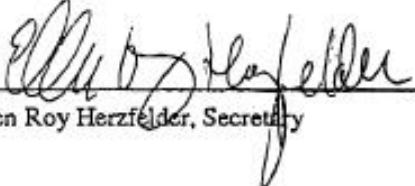
9. This MOA, or any part thereof, may be amended from time to time in a writing duly authorized and executed by the Parties.

10. The provisions of this MOA shall be binding upon, and shall inure to the benefit of, the successors and assigns of the Parties.


11. This MOA shall be effective as of the date first set fourth above, and shall terminate upon completion of the activities described in the MOA, as determined in writing by the Parties.

Executed as a sealed instrument by the duly authorized representatives of EOE, DEP and DFWELE as of the day first set forth above.

EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS:


Ellen Roy Herzfelder, Secretary

DEPARTMENT OF ENVIRONMENTAL PROTECTION:


Edward P. Kunce, Acting Commissioner

DEPARTMENT OF FISHERIES, WILDLIFE & ENVIRONMENTAL LAW
ENFORCEMENT:


David M. Peters, Commissioner